

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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CABLE NEWS NETWORK, INC.,

CA No: 17-1167

Plaintiff,

Washington, D.C.

January 22, 2018

vs.

3:49 p.m.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.  
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TRANSCRIPT OF CLOSED HEARING  
HELD BEFORE THE HONORABLE JUDGE BOASBERG  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

Carol Federighi, Esq.

Marcia Berman, Esq.

Brett Schumate, Esq.

Michael Dreeben, Esq.

Aaron Zebley, Esq.

Adam Jed, Esq.

Court Reporter:

Lisa A. Moreira, RDR, CRR

Official Court Reporter

U.S. Courthouse, Room 6718

333 Constitution Avenue, NW

Washington, DC 20001

202-354-3187

Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription

## P R O C E E D I N G S

THE COURT: Okay. Welcome, everybody. This is case of 17-1167, *Cable News Network, Inc. vs. Federal Bureau of Investigation* and consolidated cases therewith, which are 17-1175, 17-1189, 17-1212, and 17-1830. We're present in court. The courtroom has been sealed and made secure.

I would ask counsel from the government to identify themselves for the record at the -- yes, and please at the podium.

MS. FEDERIGHI: Carol Federighi from the Justice Department on behalf of defendants, Your Honor, and I have Marcia Berman as well as Brett Shumate.

THE COURT: Okay.

MR. DREEBEN: Your Honor, Michael Dreeben from the Special Counsel's Office, and with me is Aaron Zebley, Deputy Special Counsel, and Adam Jed, J-E-D, who is an Assistant Special Counsel.

THE COURT: All right. Thank you very much.

Now, the reason we are here is that I have asked for a proffer from a member of the Special Counsel's legal team to give some more detail in regard to the government's claimed Exemption 7A in this case. 7A, again, protects information to the extent that production of that information could reasonably be expected to interfere with enforcement proceedings that are pending or reasonably

1       anticipated, and although I've reviewed the declaration from  
2       David Archey, A-R-C-H-E-Y, which was an in camera ex parte  
3       declaration, I believe that more specific information is  
4       still required to explain how production of the memos at  
5       issue could interfere with Special Counsel proceedings.

6               So I would ask you, Mr. Dreeben, if you're  
7       prepared to make that proffer?

8               MR. DREEBEN: Yes, Your Honor. Thank you. We are  
9       prepared to proceed by proffer to provide the Court with the  
10      information necessary to understand the government's  
11      invocation of Exemption 7A in this circumstance.

12              My role in the Special Counsel's Office is as  
13      counselor to the Special Counsel. In that capacity I have  
14      been involved in all phases of the investigation, including  
15      the matters that I am going to discuss today, and that  
16      knowledge consists not only of my personal participation in  
17      the investigation, but also through consultations with the  
18      agents and the prosecutors who are specifically assigned to  
19      handle those matters.

20              As background, on May 17, 2017, the acting  
21      Attorney General appointed, as Special Counsel, Robert  
22      Mueller to conduct an investigation that was defined in the  
23      acting Attorney General's order. That investigation  
24      entailed exploring the matters that Former FBI Director  
25      Comey had detailed in a hearing on March 20th in the House

1 Committee appearance that he made as well as matters that  
2 arose from or may arise from that investigation and matters  
3 that are covered by 28 CFR 600.4. That section of the  
4 Special Counsel Regulations authorizes the Special Counsel  
5 to look into matters that would interfere with the  
6 investigation being conducted, including obstruction of  
7 justice.

8 Before the appointment of the Special Counsel on  
9 May 17th, the FBI had opened an investigation into  
10 obstruction of justice. That investigation entailed matters  
11 that were covered in the Comey memoranda, which explored and  
12 recorded Mr. Comey's recollections of meetings, including  
13 one-on-one meetings with the President of the United States.  
14 In those meetings, events occurred that led the FBI to  
15 conclude that an investigation was appropriate under its  
16 authority to consider matters such as obstruction of  
17 justice.

18 The subject of that investigation would be defined  
19 by reference to the United States Attorney's manual's  
20 consideration of what is a subject of an investigation.  
21 That is a person whose conduct is within the scope of the  
22 investigation.

23 In this instance, a person whose conduct is within  
24 the scope of the investigation is the President of the  
25 United States. The Comey memoranda record Mr. Comey's

1       recollections of one-on-one interactions with the President  
2       of the United States.

3               As part of the Special Counsel's investigation,  
4       Special Counsel is attempting to determine the facts that  
5       transpired in and surrounding those meetings. In any  
6       investigation of this kind, the recollections of one  
7       witness, if disclosed to another potential witness, have the  
8       potential to influencing, advertently or inadvertently, the  
9       recollections of that witness. Accordingly, investigative  
10      materials, such as detailed witness statements like this,  
11      are typically held in confidence through the course of the  
12      investigation and any ensuing proceedings to ensure that all  
13      witnesses provide truthful evidence based on their own  
14      recollections and not on any inadvertent or advertent  
15      tailoring or influence from other witness statements.

16             In the case of the Comey memoranda, Director Comey  
17      did testify in open Senate proceedings on June 8th as to  
18      some of the events that are captured in his prior  
19      contemporaneously recorded memoranda. But those memoranda  
20      are also far more detailed in many instances than the  
21      matters that Mr. Comey revealed either in his statement for  
22      the record or in his oral testimony before the Senate; and  
23      even in those instances in which Mr. Comey's memos mirror  
24      the language and content that he provided in open session,  
25      it is still of utmost importance to the investigation that

1       those matters remain confidential.

2               A witness who knows that a contemporaneous record  
3       was made of particular statements is aware that the  
4       reliability of that account is enhanced merely by virtue of  
5       the fact that it was recorded, and an individual who is  
6       seeking to shape or mold his own statements around those of  
7       others thereby acquires an advantage in doing so that he  
8       would not otherwise have.

9               At the same time, the Special Counsel's Office  
10       must necessarily rely heavily on its ability to corroborate  
11       the details of the encounters between Mr. Comey and the  
12       President by turning to other sources of evidence. The more  
13       that other witnesses are aware of the details of what is in  
14       the memoranda and is not in the memoranda, the greater the  
15       risk that they're providing information that will assist the  
16       Special Counsel in completing the investigation and getting  
17       to the truth would be frustrated or impeded.

18              Accordingly, Special Counsel's Office believes  
19       that the disclosure of the Comey memoranda at this time  
20       would reasonably be expected to interfere with enforcement  
21       proceedings.

22              THE COURT: All right. Thank you very much,  
23       Mr. Dreeben. I believe that that explains in more detail  
24       the government's position regarding Exemption 7A and is  
25       helpful to me in making my determination of whether that

1 exemption applies. Thank you.


2 MR. DREEBEN: Thank you, Your Honor.

3 (Whereupon the hearing was  
4 concluded at 3:59 p.m.)

5  
6 CERTIFICATE OF OFFICIAL COURT REPORTER

7  
8 I, LISA A. MOREIRA, RDR, CRR, do hereby  
9 certify that the above and foregoing constitutes a true and  
10 accurate transcript of my stenographic notes and is a full,  
11 true and complete transcript of the proceedings to the best  
12 of my ability.

13 Dated this 18th day of April, 2019.

14  
15   
16 Official Court Reporter  
17 United States Courthouse  
18 Room 6718  
19 333 Constitution Avenue, NW  
20 Washington, DC 20001  
21  
22  
23  
24  
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